

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

MICHAEL AARON BLANKENSHIP,

Petitioner,

v.

CIVIL ACTION NO. 5:16-cv-05696
(Criminal No. 5:11-cr-00001)

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

On June 24, 2016, the Petitioner, by counsel, filed a *Motion to Correct Sentence Under 28 U.S.C. § 2255* (Document 62). Also pending in the matter is the United States' Motion to Dismiss¹ (Document 69) filed on September 15, 2016.

By *Standing Order* (Document 61) entered on June 24, 2016, this action was referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On September 17, 2018, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 77) wherein it is recommended that the Petitioner's § 2555 motion be denied, the United States' Motion to Dismiss be denied as moot, and this matter be dismissed from the Court's

¹The motion (Document 69), titled *Motion of the United States to Withdraw Referral to Magistrate Judge, to Dismiss, and to Suspend Briefing Schedule*, sought multiple relief. The request to withdraw referral to the magistrate judge, and the request to suspend the briefing schedule, were previously resolved by the Court's *Order* (Document 73) entered on September 28, 2016, leaving only the motion to dismiss pending.


docket. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by October 4, 2018.

Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the Petitioner's § 2555 motion (Document 62) be **DENIED**, the United States' Motion to Dismiss (Document 69) be **DENIED AS MOOT**, and this matter be **DISMISSED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Tinsley, counsel of record, and any unrepresented party.

ENTER: October 9, 2018


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA